



# REGULATORY AGENCY ACTION

In November 1990, the San Francisco-based environmental group, Earth Island Institute Inc., filed suit in federal district court against Southern California Edison (SCE), alleging violations of the federal Clean Water Act stemming from operations at the San Onofre Nuclear Power Plant. The suit is based primarily on a 1989 report of the Coastal Commission's Marine Review Committee, which concluded after a 15-year study that the operation of the San Onofre plant kills tons of fish and kelp each year. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 135 for background information.) Among other things, Earth Island alleges that SCE's operation of San Onofre violates WRCB's permit. In March, plaintiff filed a motion for preliminary injunction against Edison, alleging that the utility is stalling in its duty to provide a mitigation plan for damage

caused by the release of cooling water from the power plant, and asking the court to "hold Edison's feet to the fire." Edison has in turn requested that U.S. District Court Judge Rudi Brewster postpone any ruling on the case until after the Regional Water Quality Control Board has held hearings and acted upon the Marine Review Committee's report. Earth Island Institute claims that this request is merely another delay tactic by Edison to avoid producing the mitigation plan and implementation timeline. The motion was scheduled for a hearing on April 22.

#### FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of each month. For the exact times and meeting locations, contact Maureen Marche at (916) 445-5240.

the following violations of the Auctioneer and Auction Licensing Act: failure to pay a consignee, failure to pay a consignee within 30 working days, use of false bidders/false bidding practices, use of false or misleading advertising or statements, and misrepresentation of goods offered for sale.

#### FUTURE MEETINGS:

November 22 in Monterey (tentative).

#### BOARD OF CHIROPRACTIC EXAMINERS

*Executive Director: Vivian R. Davis (916) 739-3445*

In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). Today, the Board's enabling legislation is codified at Business and Professions Code section 1000 *et seq.*; BCE's regulations are located in Division 4, Title 16 of the California Code of Regulations (CCR). The Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

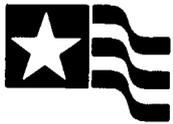
The Board consists of seven members, including five chiropractors and two public members.

#### MAJOR PROJECTS:

**Renewal Fee Increase.** At its March 7 meeting, the Board held a public hearing on its proposal to amend section 355(a) of its regulations to increase the annual license renewal fee from \$95 to \$150 (the statutory maximum). BCE also proposed to amend section 355(c), to establish a cyclical renewal system under which licenses would expire during the birth month of the licensee. Following the hearing, the Board approved this language; staff submitted the rulemaking file on the proposed regulatory action to the Office of Administrative Law (OAL) on March 25.

**Four Hours of Adjustive Technique.** At its January 17 meeting, the Board held a public hearing on a proposed regulatory amendment to section 356(d), which would specify that four hours of each licensee's annual twelve-hour continuing education (CE) requirement must be completed in adjustive technique, and must be satisfied by lecture and demonstration.

The Board received numerous written and oral comments on the proposed change. Most witnesses opposed the change, arguing that the Board lacks statistical data on the number of CE hours most chiropractors complete each year in



## INDEPENDENTS

#### AUCTIONEER COMMISSION

*Executive Officer: Karen Wyatt (916) 324-5894*

The Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR). The Board, which is composed of four public members and three auctioneers, is responsible for enforcing the provisions of the Act and administering the activities of the Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members

must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

#### MAJOR PROJECTS:

**Newsletter.** In its March newsletter, the Commission noted that it currently regulates 1,113 auctioneers and 223 auction companies.

Between July 1, 1990 and March 1991, the Commission received 114 complaints against its licensees, of which 46 were pending as of March 1991. During that time period, the Commission assessed 19 fines, assigned 23 cases out for investigation, and filed 7 disciplinary actions.

Also in the March newsletter, the Commission noted that at its May 6 meeting, it would be reviewing proposed disciplinary penalty guidelines, for use by administrative law judges who preside over Commission disciplinary hearings and make disciplinary recommendations to the Board. The proposed guidelines set forth minimum and maximum penalties, plus a description of aggravating and mitigating factors, for



addition to the required twelve hours. If most chiropractors complete only the minimum, then CE providers will be forced to limit most of their course offerings to adjustive technique; additionally, the four-hour adjustive technique requirement will cut into the amount of time available for other seminars. Other witnesses noted that some chiropractors do not engage in adjustments, and devoting one-third of the required CE to adjustive technique neither furthers such a chiropractor's competency nor protects the consumer. Some witnesses stated that the twelve-hour requirement is insufficient, and that even it is being diminished by the required devotion of four hours to adjustive technique.

Following the hearing, the Board took no action on this proposal. However, at its March 7 meeting, the Board approved the amendment as published; at this writing, the rulemaking package has not yet been submitted to OAL.

*Update on Other Proposed Regulatory Changes.* On January 31, the Board submitted its proposed amendments to section 331.1 to OAL for approval. These changes add a preamble to the section which obliges chiropractors to diagnose and recognize conditions and diseases beyond their scope of practice. BCE also added new subsection (d), relating to the approval of chiropractic schools. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 165 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 198 for background information.) On February 15, OAL rejected these amendments, finding that the regulatory action failed to satisfy the necessity, consistency, and clarity standards of Government Code section 11349.1. At this writing, the Board has not yet decided whether to resubmit these proposed amendments; it has until June 26 to do so.

On February 22, BCE submitted its proposed addition of sections 306.1 and 306.2 to OAL. Section 306.1 would authorize the Board to create Mid-Level Review panels as part of its discipline system, and section 306.2 would provide legal representation by the Attorney General's office in the event that a person hired or under contract to the Board to provide expertise to BCE, including a Mid-Level Review Panel member, is named as a defendant in a civil action. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 137 and Vol. 10, No. 4 (Fall 1990) pp. 165-66 for background information.) On March 25, OAL rejected the rulemaking package, because it failed to satisfy the clarity and necessity standards of Government Code section 11349.1, and because BCE failed to submit its data or calculations used in computing the fiscal

impact of the regulatory change. The Board intends to resubmit these changes to OAL, and has until July 30 to do so.

On January 24, BCE withdrew its proposed addition of section 356.1, which was the subject of a December 1990 public hearing. The regulation would have established the criteria which the Board will use to approve chiropractic associations sponsoring continuing education seminars in chiropractic. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 136 for background information.)

At this writing, the Board has not yet adopted new section 312.3, regarding the ability of chiropractors licensed in other states to render professional services and/or evaluate or judge any person in California. This regulatory action was the subject of a December 1990 public hearing. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 136 for background information.) BCE was scheduled to revisit this matter at its June meeting.

On March 15, the Board published notice of its intent to adopt amendments to section 317(u), which would prohibit chiropractors from using "no out of pocket" billing as an advertisement or billing device unless the patient and the insurance company are notified by the chiropractor. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 136; Vol. 10, No. 4 (Fall 1990) p. 166; and Vol. 10, No. 1 (Winter 1990) p. 145 for background information.) The Board was scheduled to receive written comments on these amendments until April 30.

The Board has decided not to resubmit to OAL its adoption of new section 355(c), which would require certain chiropractors to complete a minimum of 48 hours of a thermography course. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 137 and Vol. 10, No. 4 (Fall 1990) p. 165 for background information.) OAL rejected this section for a second time in November 1990.

#### LEGISLATION:

*SB 1165 (Davis).* Under the Knox-Keene Health Care Service Plan Act of 1975, health care service plans (HCSP) are licensed and regulated by the Commissioner of Corporations. Under the Act, a HCSP which negotiates and enters into certain contracts with professional providers is required to give reasonable consideration to timely written proposals for affiliation by licensed or certified professional providers, including chiropractors. Violation of this Act is a misdemeanor. As introduced March 8, this bill would prohibit any HCSP which offers or provides one or more chiropractic services as a specific chiropractic plan benefit, when those services are not provid-

ed pursuant to a contract as described above, from refusing to give reasonable consideration to affiliation with chiropractors for provision of services solely on the basis that they are chiropractors. This bill, which would also make the misdemeanor provision inapplicable with respect to this bill, is pending in the Senate Committee on Insurance, Claims and Corporations.

*SB 664 (Calderon),* as introduced March 5, would prohibit chiropractors and other health care professionals from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This bill is pending in the Senate Business and Professions Committee.

#### LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n, et al., v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento County Superior Court), petitioners and intervenors challenge BCE's adoption and OAL's approval of section 302 of BCE's rules, which defines the scope of chiropractic practice. The parties have been engaged in extensive settlement negotiations following the court's August 1989 ruling preliminarily permitting chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation. A significant step towards final settlement occurred recently when the California Medical Association reached a settlement with BCE and other parties by agreeing to language of a proposed regulation on the scope of practice designed to replace the challenged section. This new scope of practice regulation is to be submitted by BCE to OAL as an emergency regulation. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 127; Vol. 9, No. 3 (Summer 1989) p. 118; and Vol. 9, No. 2 (Spring 1989) p. 112 for background information on this case.)

#### RECENT MEETINGS:

At the Board's January meeting, staff announced that the Board has moved to new offices at 3401 Folsom Boulevard, Suite B, in Sacramento. The Board's new telephone number is (916) 739-3445.

Also in January, the Board elected its 1991 officers. Dr. Louis E. Newman was elected Board Chair; Dr. Mathew A. Snider was elected Vice-Chair; and Dr. Barbara J. Bagwell was elected Secretary.